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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

CALVIN WASHINGTON

CIVIL ACTION NO. 07-0537

VERSUS

JUDGE DOHERTY

MICHAEL J. ASTRUE, COMMISSIONER
SOCIAL SECURITY ADMINISTRATION

MAGISTRATE JUDGE METHVIN

MEMORANDUM RULING

Pending before this Court is a Report and Recommendation issued by the magistrate judge, in which the magistrate judge recommends the Commissioner's decision in this social security matter, denying benefits, be affirmed and the case dismissed. [Doc. 16] Claimant Calvin Washington filed an objection to Magistrate Judge Methvin's Report [Doc. 17], wherein Mr. Washington contends his physical condition has deteriorated tremendously since the Appeals Council denied a review of his claim. Specifically, Washington contends he has had two back surgeries since the Appeals Council denied review, including a laminectomy and disc excision at L3-4 and L4-5 on June 26, 2007, as well as a second lumbar surgery at those same levels on February 26, 2008. Mr. Washington claims his symptoms are more severe than his original medical records indicate, and that these new medical records and test results provide "more objective proof of claimant's disability."

Additionally, Mr. Washington claims that in December 2007, he was confined to Oceans Behavioral Hospital for major depression and continues to be treated on an out-patient basis with that hospital.

Finally, Mr. Washington contends that one basis for the magistrate judge's denial of his claim

included his failure to seek treatment for his back pain on a continuing, regular basis. Mr. Washington argues this was due to the fact that his workers compensation claim was disputed by his employer, and he was refused medical care and treatment until his hearing before the Department of Labor in January 2005.

Mr. Washington seeks an order of this Court rejecting the recommendation of the magistrate judge, or, alternatively, a remand to either the ALJ or the Appeals Council for consideration of the new evidence he presents in support of his claim for benefits.

This Court makes no finding at this time regarding the substance of Mr. Washington's claims, but notes the jurisprudence requires a remand of social security appeals to the Commissioner in certain circumstances where new evidence is submitted.

Considering the foregoing, the instant matter is REMANDED to the magistrate judge for consideration of the arguments presented by claimant in his objection, and specifically, for a determination as to whether the instant matter should be remanded to the Commissioner in light of the new medical evidence submitted. The magistrate judge is ORDERED to prepare and submit a supplemental report and recommendation to this Court containing her findings and, to the extent a remand is recommended, shall specifically state whether such remand is recommended pursuant to the Fourth or Sixth Sentences of 42 U.S.C. §405(g)

THUS DONE AND SIGNED in Chambers, Lafayette, Louisiana, this 4 day of August, 2008

CLERK
8-5-08
CJ
MEM/ [signature]


REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE